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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,299	12/16/2003	Isaac D. White	BE1-0039US	7666
49584	7590	11/01/2007	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201			LE, TAN	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/737,299	Applicant(s) WHITE ET AL.	
	Examiner Tan Le	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10,11 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,17 and 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5-8, 10-11, 13-16 and 18-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendment filed 10/16/07 is acknowledged. Claims 1, 5-8, 10-11, 13-16 and 18-19 are currently pending. Claims 3, 9 and 12 have been canceled. Claims 2, 4, 17 and 20-24 were previously withdrawn.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/16/07 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-8, 10-11, 13-16 and 18-19 are under 35 U.S.C. 103(a) as being unpatentable over AU Patent No. 200223231 to Nagle in view of US Patent No. 6,042,080 to Shepherd et al. and further in view of US Patent No. 6,158,555 to Brown, Jr.

As to claims 1, 5-8, 10-11, 13-16 and 18-19, Nagle teaches a telescopic support pole for supporting a cable above the ground or floor at construction sites and in

factories comprising a base (19); at least one or more segments (25) connected to the base; at least second segment (12, 14) connected to the first section; a cable receptacle (28) attached to an end portion of one of the segment; the cable receptacle having a generally U-shaped cross-section for receiving cable.

The Nagle device differs from claim 1 and 19 of the present invention in that it is not provided with at least one attachment device in the base, wherein the attachment device is an adhesive to adhere the base to the attachment surface.

Shepherd et al. teaches the concept of such. In particular, Shepherd teaches an adhesive attachment device (14, 26, Fig. 3 for example) in the base for attachable to the surface wherein the base can be removable attached to the attachment surface. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a an adhesive attachment device on the Nagle base as taught by Shepherd et al. in order to provide a base which is extremely stable, inexpensive and simple to set up with minimal effort and readily removable and transportable.

The Nagle device as modified also differs from claims 1 and 19 of the present invention is that it is not provided with a control system operative associated with the cable, wherein the control system is configured for receiving instructions communicated through at least one communication media, and a portable communication device configured to provide instructions to control system through at least one communication media, and at least one mechanical driving mechanism such as "gears, chains, belts, ball bearings, and/or other like components" (Applicant's specification, page 8, [0024]) operatively coupled to respond the control system to enable the telescoping action.

Brown Jr. teaches the concept of such, Brown, Jr. teaches the control system generally in a control panel 16 and control the extension and retraction of the mast 4 through drive mechanism (not shown)) –it would have been obvious to one of ordinary skill in the art at the time the invention to provide a control system operative associated with the cable wherein the control system is configured for receiving instructions communicated through at least one communication media, and a portable communication device configured to provide instructions to control system through at least one communication media and at least one mechanical driving mechanism operatively coupled to respond the control system to enable the telescoping action on the Nagle as modified telescopic support pole as taught by Brown Jr. in order to allow the user to remotely control the telescopic action through wireless medium to a computer system which instructs the driving mechanism to extend the telescoping segments so that the height of the pole can be automatically adjusted depending the conditions of use.

Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an automatic control means which in this case a control system and a portable communication device operatively associated with the telescopic segments of the pole or mass and the mechanical driving mechanism operatively coupled to respond to the control system to enable the telescopic action, since it has been held that broadly providing a mechanical or automatic means to replace manual activity, which has accomplished the same result involves only routine skill in the art. In re Venner, 120 USPQ 192.

Response to Arguments

Applicant's arguments with respect to claims 1 and 19 have been considered but they are not deemed to be persuasive.

Applicant argues that "Nagle fails to teach or suggest every aspect of claim 1. As noted by the Examiner, Nagle discloses a telescopic support pole, but does not teach a control system or a mechanical driving system for its telescopic support pole. (Final Office Action, Page 2, Lines 15-16). Accordingly, Nagle cannot teach or suggest, "a portable communication device configured to provide instructions to the control system through the at least a wireless communication media," as recited in claim 1. (emphasis added). Second, the deficiencies of Nagle are not remedied by the teachings of Brown Jr. In contrast, Brown Jr. discloses a control panel 16 that is "generally mounted to the exterior of the vehicle 2, and affords control of the extension and retraction of mast 4..." (emphasis added). (Column 2, Lines 45-48). Moreover, Brown does not disclose that the control panel 16 controls the extension and retraction of mast 4 via a "wireless communication media". In other words, Brown Jr. does not teach or suggest, "a portable communication device configured to provide instructions to the control system through the at least a wireless communication media," as recited in claims 1 and 19 (emphasis added). Accordingly, for at least the reasons stated above, the cited references to Nagle and Brown Jr., whether individually or in combinations, fail to disclose, teach, or fairly suggest every aspect of claim 1". These arguments are not deemed to be persuasive:

First, with respect to the identified phrase of claim "configured to provide instructions to the control system through at least a wireless communication media" as recited in claims 1 and 19. This phrase shows a functional intended use which is not the positive limitation to the recited claims and has not been considered further.

Second, Applicant's argument appear to be against the references individually/contentions concerning the combination of Nagle and Brown Jr., One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Patentability is based on the invention as claimed in view of the teachings of the prior art taken as a whole. Further, a combination of references is proper for any reason taught by the prior art, not just applicant's reason. There is also no requirement for one reference to explicitly suggest its combination with other references. Rather, the test for combining references is that there be some suggestion, known in the art, for combining the reference disclosures.

Third, as noted in the rejection above, to provide a portable communication device to give instruction to the control system to make the system control remotely or automatically would have been obvious to one of skill in the art since it has been held that broadly providing mechanical or automatic means to replace manual activity, which has accomplished the same result involves only routine skill in the art. *In re Vennner*, 120 USPQ 192. In addition, it would also have been obvious to one having ordinary skill in the art at the time the invention was made to provide a portable communication device

to provide instructions to the control system since it has been held that making an old device portable or movable without producing any new and unexpected result involves only routinely skill in the art. In re Linderg, 93 USPQ 23 (CCPA 1952).

Fourth, with respect to Applicant's argument concerning that the control panel 16 of Brown, Jr. that is "generally mounted to the exterior of the vehicle 2, and affords control of the extension and retraction of mast 4. Therefore Brown, Jr. also cannot teach or suggest, "a portable communication device configured to provide instructions to the control system through at least one communication media". This argument is also not persuasive as pointed in the previous office action. Brown Jr, clearly teaches that the use of control system operatively associated with the cable drop support system through which the control system (which controls by panel) receives instructions communicated through at least one communication media, which is old and well-known per se in the lifting and lowering system. It has long been established by case law that it is well-within the level skill in the art to utilize known features of the art for the purpose for which they are known. Replacement of the fixed control panel for another portable communication device is well-within the purview of one of ordinary skill in the art. In view of the above reasons, and in view of the evidence by the rejection pointed out in the office action, the examiner respectfully submits that the cited references to Naggle and Brown Jr., in combination, would have fairly suggest to one of ordinary skill in the art and he combination of references renders the claims obvious within the meaning of Section 103.

Conclusion


THIS ACTION IS MADE NONFINAL.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (571) 272-6818.

The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


AMY J. STERLING
PRIMARY EXAMINER
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Tan le
October 25, 2007.